



County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE

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DAVID E. JANSSEN
Chief Administrative Officer

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Fifth District

March 30, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**AMENDMENT NO. 5 TO LEASE NO. 60435 AND CLAIM SETTLEMENT
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
800 SOUTH BARRANCA AVENUE, COVINA
(FIFTH DISTRICT) (3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and Instruct the Chairman to sign the attached Amendment hereinafter referred to as Exhibit A, with Limar Realty #95, LLC (Lessor) extending the lease term for the facility located at 800 South Barranca Avenue, Covina until September 30, 2005, increasing the rental rate to \$2,363,143 annually for the period ending on February 28, 2005, and increasing it thereafter to \$2,445,853 annually to reflect the short-term tenancy, and releasing Claim No. 03-1010973*001 filed on October 20, 2003 with County Counsel in the amount of \$67,454.72. The Amendment will allow the Department of Children and Family Services (DCFS) to continue occupancy of the subject facility comprising 89,513 rentable square feet of office space and appurtenant parking pending relocation to a new facility. The rental costs are approximately 87 percent subvented by State and Federal funds.

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2. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1, Section r, of the Environmental Document Reporting Procedures and Guidelines adopted by your Board and Section 15062 (b)(3) of the State CEQA Guidelines.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the proposed action will provide DCFS continued occupancy of the leased premises and uninterrupted delivery of programs and services to the constituency in this geographic area. The short-term Amendment will allow time for DCFS to relocate to a new facility which will meet the department's expanded telecommunication requirements and relieve overcrowding in the existing facility.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The Countywide Strategic Plan directs that we ensure that service delivery systems are efficient, effective, and goal oriented (Goal 3), and that we strengthen the County's fiscal capacity (Goal 4). In this case, the proposed action will enable DCFS programs to continue to provide services to the residents at the same location while allowing time to pursue other alternatives that could be more fiscally and operationally prudent.

FISCAL IMPACT/FINANCING

The rental cost of the full-service lease, net utilities, will be \$2,363,143 until February 28, 2005, increasing thereafter to \$2,445,853, which is approximately 87 percent offset by Federal and State subvention. The following chart delineates the impact of the proposed Amendment on the total space costs.

	Current Lease	Proposed Amendment	Change
Area	89,513 rentable square feet	89,513 rentable square feet	Same
Annual Rent (including parking)	\$1,611,234 (full-service, net utilities), or \$18.00/sq.ft.	\$2,363,143 (full-service, net utilities), or \$26.40/ square foot until February 28, 2005, and increasing to \$2,445,853, or \$27.32/ square foot, effective March 1, 2005 ⁽¹⁾	\$751,909 until February 28, 2005, and \$834,619 as of March 1, 2005
Annual Cost Per Square Foot	\$18.00	\$26.40	+\$8.40
Term	Month-to-month	Fixed term until September 30, 2005	+18 months
Cancellation	Upon 30 days prior written notice by either party	None	N/A
Rental Adjustments	Based on Consumer Price Index, capped at three percent annually	Step increase of 3.5 percent effective March 1, 2005, as indicated above	+ 3.5 percent (fixed)

(1) Utilities costs are estimated according to BOMA to be an additional \$268,539 annually. Actual utilities were historically at \$365,220 due to the extended hours of the program.

Sufficient funds are available in the 2003-04 Rent Expense Budget and will be charged back to the Department.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Since August 9, 1989, the County has leased approximately 89,513 rentable square feet of office space with 349 subterranean parking spaces in the building and 125 supplemental parking spaces in an adjacent retail parking structure. The facility is utilized to house DCFS Services Bureau III and the Revenue Enhancement Bureau.

- In August 1996, the subject lease was extended from a ten to fourteen-year term, and converted from split-service to a full-service lease, net utilities (whereby the Lessor is responsible for all operating expenses associated with the premises, except for utilities for which the County is responsible). The rental rate was lowered dramatically to reflect the reduced market rates at that time.
- Since the expiration of the lease on August 9, 2003, the County's tenancy has continued on a month-to month basis, pursuant to the holdover provision contained in the Lease.
- The Lessor had initially requested an increase to \$19.20 per square foot to reflect the current market rate and had served the County with a 30-day notice.
- The increase was negotiated to \$18.00 per square foot, with an additional increase to \$19.20 effective May 9, 2004 to parallel the estimated increase in the Consumer Price Index (CPI).
- On September 9, 2003, the Board approved the increase which was paid effective the same day.
- The Lessor has argued that the former rental increase would be retroactive to August 9, 2003, the date of the lease termination. The Lessor subsequently filed a claim with County Counsel for \$67,454.72, which was rejected.
- A comprehensive review of the building indicated it is overcrowded and lacks the telecommunications infrastructure required for the program. Therefore, DCFS opted to consider a replacement facility.

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- Upon being notified of the County's intention to identify a replacement facility, the Lessor served the County with a 30-day notice and requested that the County vacate the facility by March 3, 2004.
- The CAO negotiated a settlement agreement which extends the lease term and releases the Lessor's claim, provided the Board approves this lease amendment on or before March 30, 2004.
- The annual negotiated rental rate will be \$26.40 per square foot for the period ending on February 28, 2005, subject to a fixed increase of 3.5 percent thereafter.
- The Amendment also contains a provision increasing the rent to 150 percent of the prevailing rate under the Amendment in the event the County holds over beyond September 30, 2005.
- The proposed action will allow the County to continue to use the subject facility with the least disruption to the program pending the negotiation of a new lease agreement for a replacement facility for your Board's future consideration.
- The proposed Amendment also contains a provision releasing the County from any obligation to the Lessor for back rent, pursuant to his previously filed claim, at no additional cost to the County.
- Based upon a rental survey of similar properties in the service area, staff has determined that the base rental range, including parking, is between \$19.20 and \$24.00 per square foot per year, on a full-service basis. Thus, the annual rent increase as negotiated with the Lessor of \$26.40 per square foot, net utilities, represents a rate higher than the market range, but enables both parties to avoid the costs and uncertainty of litigation and allows DCFS to remain in operation in the subject facility.

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ENVIRONMENTAL DOCUMENTATION

The CAO has made an initial study of environmental factors and has concluded that this project is exempt from CEQA as specified in Class 1, Section r, of the Environmental Document Reporting Procedures and Guidelines adopted by your Board November 17, 1987, and Section 15061 (b)(3) of the State CEQA Guidelines.

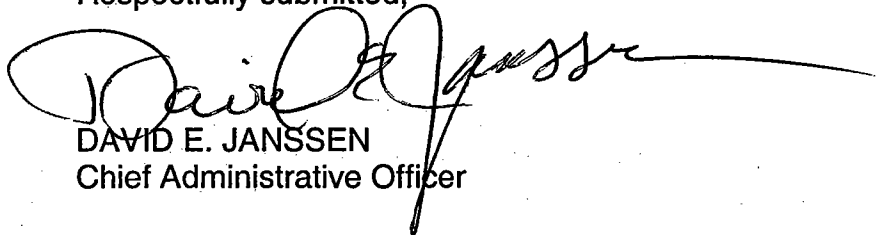
IMPACT ON CURRENT SERVICES (OR PROJECTS)

It is the finding of the CAO and DCFS that the proposed Amendment is in the best interest of the County to continue occupancy of the space necessary for this County requirement. In accordance with your Board's policy on the housing of any County offices or activities, DCFS concurs with this rental increase recommendation.

CONCLUSION

It is requested that the Executive Officer, Board of Supervisors, return two originals of the adopted, stamped Board letter and two certified copies of the Minute Order to the Chief Administrative Office, Real Estate Division at 222 South Hill Street, Fourth Floor, Los Angeles, CA 90012 for further processing.

Respectfully submitted,



DAVID E. JANSSEN
Chief Administrative Officer

DEJ:CWW

CEM:MS:hd

Attachments (2)

c: County Counsel

Auditor-Controller

Children and Family Services

Internal Services Department

800Barranca.b2

AMENDMENT NO. 5 TO LEASE NO. 60435
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
800 SOUTH BARRANCA AVENUE, COVINA

Exhibit A

This Amendment No. 5 to Lease No. 60435 (the "Amendment" or "Amendment No. 5") is made and entered into this _____ day of March 2004, by and between Limar Realty #95, LLC, hereinafter referred to as "Lessor", and the County of Los Angeles, a body politic and corporate, hereinafter referred to as "Lessee".

WHEREAS, Limar Realty #95, LLC, is the successor in-interest to Barranca Covina Delaware, Inc., who in turn is the successor in-interest to Barranca Covina Realty Private Limited, as Lessor, and the County of Los Angeles, as Lessee have entered into that certain Lease and Agreement No. 60435, dated October 25, 1988, hereinafter referred to as "Lease", for the building located at 800 South Barranca Avenue, Covina, and;

WHEREAS, said Lease has later been amended, in certain respects, by Amendment No. 1 to Lease No. 60435, Amendment No. 2 to Lease No. 60435, Amendment No. 3 to Lease No. 60435, and Amendment No. 4 to Lease No. 60435, and;

WHEREAS, the parties are now desirous to further amend said Lease No. 60435 in certain respects, as hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby deemed a contractual part hereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and the rents, covenants and agreements herein contained, and intended to be legally bound, Lessor and Lessee hereby covenant and agree as follows:

1. Paragraph 2 ORIGINAL TERM to the Lease shall be deleted in its entirety, and in its place shall appear:

"The term and other provisions of this Amendment No. 5 to Lease No. 60435 shall be effective upon approval by the Board of Supervisors which will take place on or before March 30, 2004, and shall end on September 30, 2005."

2. Paragraph 3 RENT to the Lease shall be deleted in its entirety and in its place shall appear:

"Effective upon Board's approval, Lessee agrees to pay as rent for the demised premises the sum One Hundred Ninety Six Thousand Nine Hundred Twenty-Eight and 60/100 Dollars (\$196,928.60) per month (\$2.20 per square foot) during the term and until February 28, 2005. Thereafter, and effective March 1, 2005, the monthly rent shall be Two Hundred Three Thousand Eight Hundred Twenty-One and 10/100 Dollars (\$203,821.10). The rent shall be payable in advance by Auditor's General Warrant. Rental payments shall be payable within fifteen (15) days after the first day of each and every month of the term hereof provided Lessor has caused a claim for each such month to be filed with the Auditor of the County of Los Angeles prior to the first day of each month."

3. Paragraph 6 HOLDOVER of the subject Lease shall be deleted in its entirety, and in its place shall appear:

"In case Lessee holds over beyond the end of the term herein provided, such tenancy shall be from month-to-month only, subject to the terms and conditions of this Lease (except for the rent), but shall not be a renewal hereof. The rent to be paid therefore shall be at 150% of the rate prevailing under the terms of this Lease on a full-month basis only; i.e., no proration for partial month occupancy. During the holdover period, the Lease may be terminated by either party upon a 30-day written notice to the other party."

4. Paragraph 5 CANCELLATION, Paragraph 21 RENTAL ADJUSTMENTS and Paragraph 27 RIGHT OF FIRST REFUSAL TO PURCHASE of the Lease shall be deleted in their entirety.
5. As a consideration for the County executing this Amendment No. 5, Lessor understands and accepts this Amendment as a consideration for the releasing the Lessee from claims demands, sums of money, actions, rights, causes of actions, obligations and liabilities of any kind pursuant to that certain claim filed by Lessor and known as Claim No. 03-1010973*001, as fully described on the attached Release Agreement.
6. During Lessee's tenancy, Lessor shall have the right to show the Premises to prospective tenants, provided Lessor has notified Lessee of its intent to show the Premises at least 24 hours in advance of such showing.
7. The prior execution of this Amendment by the Lessor is conditioned upon its counter-execution by the Lessee on or before March 30, 2004, otherwise it will be considered null and void.
8. All other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the Lessor has executed this Amendment or caused it to be duly executed, and the Lessee by order of its Board of Supervisors, has caused this Amendment to be executed on its behalf by the Chairman of said Board and attested by the Clerk thereof the day, month and year first written above.

"Lessor"

LIMAR REALTY #95, LLC

By: 

Theodore H. Kruttschnitt
Manager

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer-Clerk
of the Board of Supervisors

"Lessee"

COUNTY OF LOS ANGELES

By: _____

Deputy

By: _____

Chairman Board of Supervisors

APPROVES AS TO FORM:

LLOYD W. PELLMAM
County Counsel

By: 

Francis E. Scott
Principal Deputy

RELEASE AGREEMENT

In consideration for and conditioned upon the concurrent execution of AMENDMENT NO. 5 TO LEASE NO. 60435, hereinafter called "AMENDMENT" between the COUNTY OF LOS ANGELES "LESSEE" or "COUNTY" and LIMAR REALTY #95, LLC "LESSOR", the parties herein agree that the COUNTY is executing the AMENDMENT in consideration for LESSOR releasing its claim against the COUNTY with the face amount of \$67,454.72, and known as Claim No. 03-1010973*001 ("the CLAIM"). LESSOR understands and accepts the AMENDMENT as consideration in full for the CLAIM. In respect thereto, LESSOR gives the following release and makes the following agreement:

1. Release. LESSOR, for itself and its successors and assigns, hereby releases, discharges and acquits the COUNTY, its Board of Supervisors and each member thereof, its officers, agents, employees, attorneys and representatives of and from any and all claims, demands, sums of money, actions, rights, causes of action, obligations, and liabilities of every kind and nature, known and unknown, suspected and unsuspected, which LESSOR ever had, or which LESSOR or any of its successors or assigns may have at any time in the future, arising out of or in any way connected with the CLAIM or any of the allegations made therein, all costs, expert fees, attorneys' fees, and all other expenses incurred therein, all consequences of the filing or prosecution thereof, and all other matters arising therefrom. Notwithstanding any provision to the contrary of this Release Agreement, the release of COUNTY by LESSOR is limited to release of the CLAIM and expenses incurred with respect to the CLAIM, and in no event shall this Release Agreement be construed to release the COUNTY from any of its obligations pursuant to the AMENDMENT, or pursuant to the underlying Lease ("LEASE"), save and except only for those obligations directly relating to the CLAIM. Each party shall bear its own costs and attorney's fees relating to the CLAIM and/or the LEASE and /or its AMENDMENT.

2. Estoppel. LESSOR hereby represents and agrees and shall forever be estopped to deny:

(a) That it has read this RELEASE AGREEMENT ("RELEASE") and knows the contents thereof;

(b) That LESSOR freely intended to execute this RELEASE and make the AGREEMENT provided for herein;

(c) That LESSOR has made such investigation as it deems necessary of the CLAIM being released hereby, of the value thereof, of the AGREEMENT provided for herein, and of the facts and the law pertaining thereto;

(d) That, in executing this RELEASE and making the AGREEMENT provided for herein, LESSOR has done so freely and voluntarily, that it does not rely on any statement, representation, or promise by the COUNTY, or any of its officers, agents, employees, or representatives, regarding the AMENDMENT, any of the terms therein, or the value of the claims released, except as expressly set forth in writing therein;

(e) That, in executing this RELEASE and making the AGREEMENT provided for herein, LESSOR accepts the risk of any mistake of law or fact relating to the CLAIM and this RELEASE.

3. No Assignments. LESSOR agrees that it has not assigned or otherwise transferred any interest in the CLAIM which it is releasing under the terms hereof, and that it agrees to indemnify and hold harmless the COUNTY from and against any and all liability, loss, cost, damage, claims, demands, expenses, and attorney's fees incurred by COUNTY as a result of anyone asserting any rights or claims under any such assignment or transfer.

4. Waiver of Rights Under Civil Code Section 1542. LESSOR waives any and all rights, if any, which it may have under Section 1542 of the Civil Code of the State of California with respect to the referenced CLAIM and this RELEASE AGREEMENT. Said Section 1542 provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

5. No Admission of Liability. This RELEASE is made in connection with the resolution of contested claims. It does not constitute any admission of liability or any admission as to the validity or invalidity of any of the claims or defenses raised by any of the parties hereto.

6. Benefit and Burden. This RELEASE shall be binding upon and inure to the benefit of the parties hereto and their respective officers, agents, employees, heirs, representatives, successors and assigns. Except as expressly provided for in the RELEASE, it is intended to benefit only the parties hereto. This RELEASE is not intended to benefit, and shall not be construed to benefit, any other persons or entities.

7. Interpretation. None of the parties hereto, nor their respective counsel, shall be deemed the drafter of the RELEASE nor the AMENDMENT for the purpose of construing the provisions hereof. The language in all parts of these documents shall in all cases be construed according to its fair meaning and not strictly for or against any party.

IN WITNESS WHEREOF, the LESSOR has executed this RELEASE AGREEMENT
or caused it to be duly executed, this 17th day of March, 2004.

LESSOR

LIMAR REALTY #95, LLC
a limited liability company

By: 

Theodore Kruttschnitt

Its: Manager